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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CARLOS ALVIZO,

Plaintiff,

vs.

ANDREW SAUL,  
Commissioner of Social Security,

Defendant.

Case No.: 2:20-cv-00805-EJY

**UNOPPOSED MOTION FOR EXTENSION OF  
TIME TO FILE CERTIFIED  
ADMINISTRATIVE RECORD AND ANSWER;**

**(SECOND REQUEST)**

1 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through  
2 his undersigned attorneys, hereby moves for a sixty-day extension of time to file the Certified  
3 Administrative Record (CAR) and answer to Plaintiff’s Complaint. The CAR and answer to Plaintiff’s  
4 Complaint are due to be filed by September 25, 2020. This is the Commissioner’s second request for an  
5 extension. The following provides the Court with an updated status of the agency’s ability to prepare  
6 CARs.  
7

8 Defendant makes this request in good faith and for good cause, because the eCAR, which must be  
9 filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health  
10 emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security  
11 Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible  
12 for producing the eCAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). Prior to the  
13 COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all hearing recordings,  
14 which are part of the administrative record, were downloaded onto compact discs and encrypted. OAO  
15 securely routed the encrypted discs to a private contractor through a daily pickup and delivery service at  
16 the Official Duty Station (ODS) in Falls Church, Virginia. The private contractor would transcribe the  
17 hearing recording and send the paper copy of the hearing transcript back to OAO. OAO personnel would  
18 then scan the hearing transcript into the electronic record or place the hearing transcript in the paper case  
19 file. Thereafter, OAO personnel would assemble the administrative record in a prescribed order. After  
20 the advent of COVID-19, the Agency has taken a number of concrete steps to transition its years-old in  
21 person CAR preparation process to a fully virtual one.  
22

24 As detailed in the attached declarations from Jebby Rasputnis, Executive Director of the OAO,  
25 and Christianne Voegelé, Chief of the Court Case Preparation and Review Branch 1, and Acting Chief of  
26 the Court Case Preparation and Review Branch 3, of OAO, OAO has been actively pursuing mitigation

1 efforts to allow the remote preparation of administrative records to ensure a continuity of operations. For  
2 cases in which the private contractors were already in possession of hearing recordings for transcription,  
3 with the assistance of the Office of Acquisitions and Grants (OAG), OAO received approval to receive  
4 these transcripts from the private contractors via secured email, e.g., using password protection and  
5 redacted Social Security Numbers. In April 2020, OAO began receiving such hearing transcripts from  
6 private contractors via secured email.  
7

8 For cases in which OAO had not yet submitted recordings to the private contractors before March  
9 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these cases. In May  
10 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for  
11 transcription. Through the month of May, OAO and the contractors worked to resolve technical issues  
12 that arose, particularly with large files.  
13

14 As indicated by the Rasputnis declaration, the Commissioner must navigate and overcome five  
15 simultaneous challenges as it transitions the preparation of eCARs from an in-person process to a  
16 completely virtual one:

- 17 1. Obtaining the appropriate technology, subject to Federal purchasing rules;
- 18 2. Retraining staff on the new procedures and new technology, which differ quite dramatically  
19 from the old ones;
- 20 3. Adhering to the Federal government protections for personally identifiable information (PII);
- 21 4. Working with outside vendors for transcription services, including obtaining a new vendor  
22 subject to Federal contracting rules; and
- 23 5. Completing security clearance processes for any new employees *and* any employees of new  
24 vendors before allowing access to PII and other sensitive information of the vendors. While the agency  
25 has worked hard to overcome challenges related to this transition, the agency estimates that it is  
26

1 producing CARs at approximately one-third of the level of production pre-COVID, with the hopes of  
 2 increasing that rate over the next several weeks.

3 In March, April, and May 2020, during the initial stages of the pandemic, Defendant requested a  
 4 90-day extension when the CAR was unavailable. Now that OAO has regained some capability of  
 5 producing transcripts, the Commissioner has reduced the length of extension requested to 60 days. In  
 6 this case, given the volume of pending cases, Defendant requests a 60-day extension in which to respond  
 7 to the Complaint.  
 8

9 OAO has prioritized CAR preparation based on objective factors, such as filing date, and is  
 10 working diligently to address the backlog of CARS. Out of fairness to all social security claimants,  
 11 Defendant respectfully requests that the Court defer to OAO's prioritization of cases for CAR preparation  
 12 and maintain consistency in the length of extensions granted in social security cases, absent a showing of  
 13 exceptional circumstances. Counsel for Defendant further states that the Office of General Counsel  
 14 (OGC) is monitoring receipt of transcripts on a daily basis and is committed to filing Answers promptly  
 15 upon receipt and review of the administrative records.  
 16

17 On September 17, 2020, the undersigned conferred with Plaintiff's counsel, who has no opposition  
 18 to the requested extension.

19 It is therefore respectfully requested that Defendant be granted an extension of time to file the CAR  
 20 and answer to Plaintiff's Complaint, through and including November 24, 2020.

21 Dated: September 18, 2020

Respectfully submitted,

22 NICHOLAS A. TRUTANICH  
 United States Attorney

23 **IT IS SO ORDERED.**

24 */s/ Marcelo Illarmo*  
 MARCELO ILLARMO  
 Special Assistant United States Attorney

25 *Clayton J. Zouchak*  
**U.S. MAGISTRATE JUDGE**

26 **Dated: September 21, 2020**